

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10834 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ODHAVJIBHAI MOHANBHAI SAKARIA

Versus

SURAT MUNICIPAL CORPORATION

Appearance:

MR ARUN H MEHTA for Petitioners

MR PG DESAI, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 29/12/98

ORAL JUDGEMENT

Rule. Mr. P.G.Desai, learned Advocate waives service of Rule on behalf of the respondents. At the request of the learned Advocates, this petition is taken up for final hearing to-day.

Against the alleged construction by the petitioner, one Kalpana Co-operative Housing Society approached this Court by way of petition being Special

Civil Application No. 9299/98. This Court on 9-11-98 rejected the said petition on the ground that the petitioner has an alternative remedy to file a civil suit. Against the said order, Letters Patent Appeal No. 1357/98 was preferred alongwith the Civil Application No. 10660/98. The Division Bench on 15-12-98 in the said Civil Application passed the following order:

"The counsel for the applicant submitted that respondents 4 and 5 shall be directed to stop construction. It is submitted by the counsel for respondents 4 and 5 that whatever construction is being done will be subject to the proceedings initiated by the corporation and they are prepared to pull down this structure if they are illegally constructed. However, we make it clear that respondents 4 and 5 shall not create any equities in favour of third parties. The Corporation is directed to complete the proceedings on or before 31-12-1998 and they shall afford opportunity of being heard to the applicant as well as respondents 4 and 5. Director service is permitted."

In view of this direction, the Corporation was required to complete the proceedings on or before 31st December, 1998 after hearing the present petitioner as well as the concerned Society. The petitioner, in pursuance to the notice issued on 25-11-1998 filed written objections on December 11, 1998 which were received by the Corporation on 14-12-98 as can be seen from the endorsement made by the Clerk of the office of the Municipal Commissioner, Surat Municipal Corporation (Annexure "J"). The Development officer of the respondent Corporation passed the impugned order on 15-12-1998 vide Annexure "K". Reading the said order, it appears that the petitioner as well as the concerned society were not heard. The fact that the Division Bench of this Court also passed order on 15-12-98 giving direction to complete the proceedings on or before 31-12-98 would further go to show that no party could have been heard on 15.12.1998. In this view of the matter the order dated 15-12-98 does not stand any further. Consequently the respondent Corporation will have to hear the petitioner and the concerned society in compliance with the order dated 15-12-98 passed by the Division Bench of this Court. It goes without saying that the statement made by the petitioner before the Division Bench shall continue to operate and shall be taken into account by the respondents while considering the objections of the petitioner.

In the result, this petition is partly allowed.
The order dated 15-12-1998 at Annexure "K" is quashed and set aside and the respondent Corporation is directed to pass order afresh after hearing the petitioner and the concerned society. Rule is made absolute to the aforesaid extent with no order as to costs.
